# REFORMING LABOR LAW: REFORMING LABOR

BY JEREMY BRECHER & TIM COSTELLO

LABOR TODAY

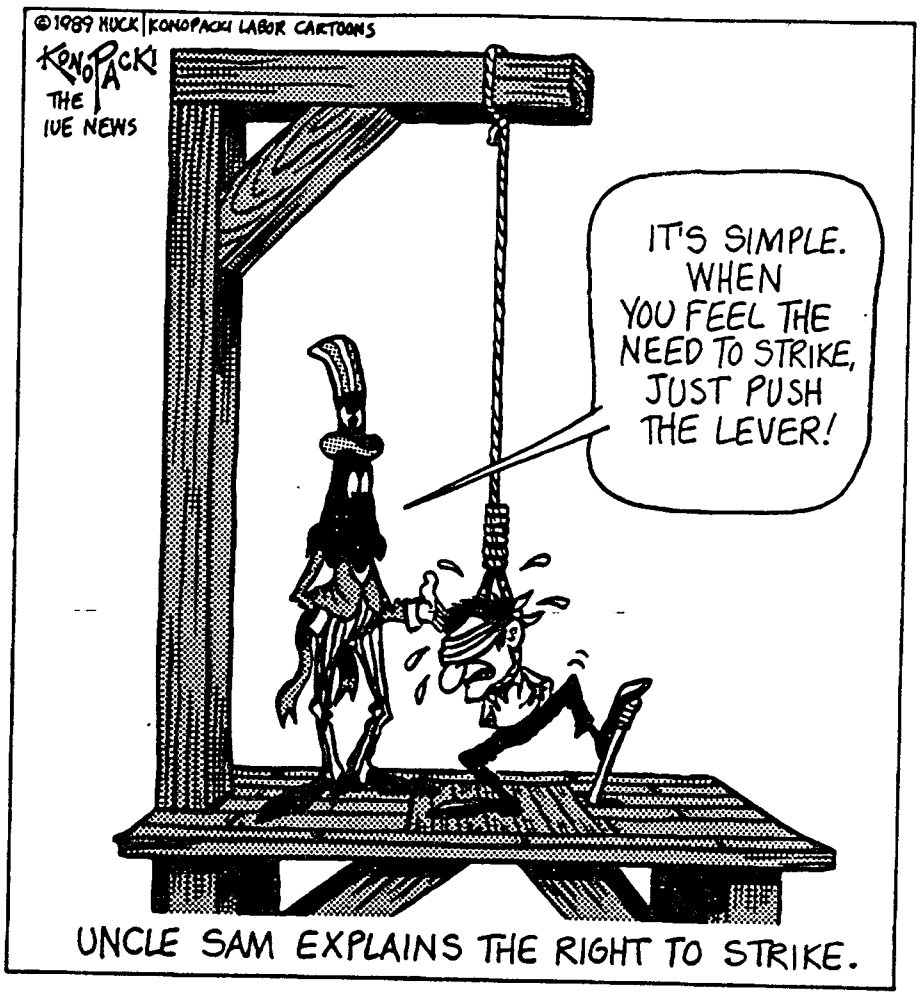
THE ARENA was a National Labor Relations Board election in Smyrna, Tennessee One contestant, representing multinational capital, was the Nisson corporation. The other, representing the American labor movement, was the UAW. The result this June was a smashing defeat for the union.

This highly symbolic contest reveals the rise of a new, multinational capitalism and the declining power of organized labor in America. But it also suggests the obsolescence of the legal forms within which American workers are attempting to deal with a transformed economy. If the labor movement is to be reborn, it will have to rethink its relation to the edifice of American labor law.

Since the mid-1970s, top union leaders have blamed their inability to organize new workers on current labor law. They have proposed labor law reform as a principal solution to the problems of the labor movement. Generally they have advocated technical changes which would make it easier for unions to win elections and first contracts. Some have gone further, calling for a "deregulation" that would repeal Federal labor laws altogether. AFL-CIO president Lane Kirkland says he would prefer "the law of the jungle" to today's probusiness labor law.

Most of the existing proposals for labor law reform have one flaw: they presume that legal changes can save the labor movement in its present form. This is to severely underestimate the scale and to misread the causes of organized labor's decline.

From a high of 34 percent of the workforce in 1956, union membership gradually decreased to 24 percent in 1980 and then plummeted to less than 17 percent today. Many now forecast that union membership will go below 10 percent. This institutional disappearing act is primarily due to forces—from international competition to the downsizing of workplace to the rigidification of the labor movement itself—which labor law reform can do little to reverse.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THE IUE NEWS
IT'S SIMPLE. WHEN YOU FEEL THE NEED TO STRIKE, JUST PUSH THE LEVER!
UNCLE SAM EXPLAINS THE RIGHT TO STRIKE.

In the wake of the UAW's defeat at Smyrna, Thomas Kochan of MIT commented, "This tells the unions they simply can't organize workers who are competitively compensated and managed with state of the art personnel practices. The labor movement has been declining and will continue to decline if it doesn't refine its role."

While labor law reform in itself can't solve the labor movement's problems, it can become significant in the context of an effort to "refine"—or rather transform—its role. The present role of unions has been largely shaped by the structure of labor law and the way the labor movement has adapted to that structure. If the labor movement is to change its role, it will have to either ignore those structures or transform them.

## Unions as Criminal Conspiracies

LAWYERS REGARD labor law as an arcane and somewhat mysterious field, based on its own principles which have developed independently of much of the rest of the law. There's a reason. Labor law must adapt to the paradoxes of the wage labor relationship that characterizes capitalism. Legally, the worker is a free person, voluntarily agreeing to sell his or her capacity to labor to the employer. But in reality the worker is a powerless person who *must* sell that capacity in order to survive. And once the sale is made,

the worker's life activity is the property of the employer; the worker is stripped of normal freedom and is obliged to obey the boss. This used to be known as wage slavery; it remains the fundamental law of labor under capitalism.

But just as the capitalist economy has evolved, so has labor law. As American workers began organizing in response to the expansion of wage labor around the turn of the 19th century, their unions were prosecuted under common law doctrines as illegal conspiracies. The courts largely rejected the union argument that, even within the framework of capitalism, workers as sellers had a right to organize to bargain over the price of what they sold.

The American economy underwent dramatic changes in the second half of the 19th century from artisan-based production for local consumption to a system dominated by huge national corporations. Thousands of smaller companies were swallowed up by larger companies, particularly as legal impediments to the growth of corporations were swept aside by state legislators and the courts. As business historian Alfred Chandler put it: "Rarely in the history of the world has an institution grown to be so important and so pervasive in so short a time."

While the economy had undergone a revolutionary change, the prevailing ideology and law did not—at least as it related to the labor movement. The courts allowed capitalists to organize themselves into corporations which were bestowed by law with the rights of single individuals, but opposed unions as interference with the "free, competitive" market. As Christopher Tomlins has written in *The State and the Unions*, "As their accommodation of the business corporation indicates, the opposition of legal institutions to private nonmarket regulation...had been crumbling since the Civil War. What the courts objected to, seemingly, was not the spread of organization per se, but the spread of labor organization in particular."

The marginality of the unions in the new political system was assured "by the consistent hostility of American legal culture to virtually any form of labor organization. That hostility is conveniently symbolized in the familiar roll-call of early twentieth century Supreme Court decisions ... condemning unions as an invasion of entrepreneurial rights and dismissing legislative attempts to endorse them as legitimate bargaining agencies."

The burgeoning labor movement responded in a variety of ways. The unions of the American Federation of Labor (AFL) generally functioned as best they could within the existing framework of the law while trying to persuade courts and legislatures to allow workers to organize, strike, and boycott without legal interference. The Industrial Workers of the World (IWW) and other radical trade unionists organized mass strikes and other forms of direct action which, while illegal, were at times too powerful for the legal authorities to halt.

The gains made by organized labor, both in its conservative AFL form and its radical IWW form were essentially wiped out by the prosperity and the antiunion drives of the 1920s. By 1930 only 13 percent of the workforce was unionized—just slightly less than today.

## Slave Labor Act or Labor's Magna Carta?

THE GREAT DEPRESSION brought a multifaceted crisis to the institutions of American capitalism. Mass misery weakened popular acquiescence in business domination of government. Strikes, while almost always defeated, developed a bitter and violent character that raised the specter of class war. The context of labor law was transformed by a new ideology which recognized that competitive capitalism had been replaced by a new corporate order.

That ideology found expression in *The Modern Corporation and Private Property* by Adolph Berle and Gardner Means. Berle was one of Roosevelt's original Brain Trust; newcomers to Washington were told this theoretical tome was the one book they had to read to participate in the New Deal. Published in 1932, it proclaimed the corporate revolution:

"It is the essence of revolutions of the more silent sort that they are unrecognized until they are far advanced. This was the case with the so-called 'Industrial revolution,' and is the case with the corporate revolution through which we are at present passing.

"The translation of perhaps two-thirds of the industrial wealth of the country from individual ownership to ownership by the large, publicly financed corporations vitally changes the lives of property owners, the lives of workers, and the methods of property tenure...(It) involves a new form of economic organization of society.

"Grown to tremendous proportions, there may be said to have evolved a 'corporate system,' as there once was a feudal system."

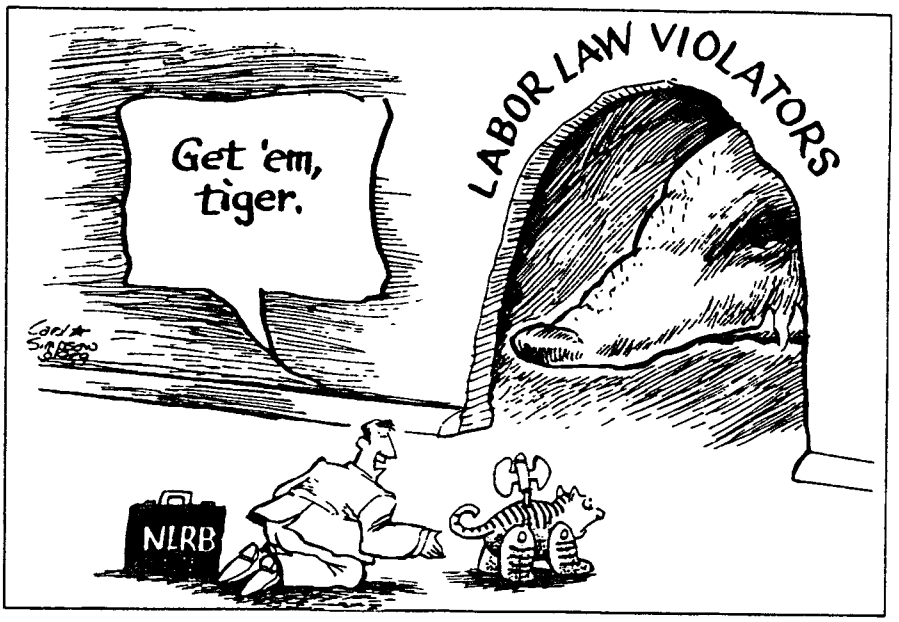
This corporate system meant that the "hidden hand" of the market would no longer provide the public with beneficial outcomes. The state had to step in and see that the economy served public needs. And the power of corporate managers had to be made accountable to those they affected— including their workers. This doctrine provided the justification for the New Deal's activism and laid the foundation for the system of labor law we know today.

The Roosevelt administration's first attempt at dealing with the Depression was the National Industrial Recovery Act (NIRA). The Act called for a relaxation of antitrust laws to permit self-regulated codes of fair practice in industry, including some price fixing; a public works program; and, under pressure from organized labor, "Section 7a," a vaguely worded guarantee of the right of workers to organize and bargain.

Quite unexpectedly, the passage of Section 7(a) helped to trigger an enormous strike wave which began in 1933 and picked up steam through 1934. As has often been the case in American history, a dialectic between insurgency and reform was established. The reform of the NIRA encouraged the insurgency of an increasingly militant labor movement, which led to further legal reforms and the institutionalization of trade unions in the American economy.

With no real enforcement powers and few resources, the National Labor Board appointed to enforce section 7(a) rights under the NIRA proved unable to deal with the massive strike wave. Businesses soon learned they could ignore the Board with impunity. By 1934 Roosevelt effectively abandoned it.

At that point, Senator Robert Wagner and his staff began drafting the National Labor Relations Act (NLRA)—widely known as the Wagner Act. Wag-




ner had a long interest in labor law dating from his days as a judge in New York. He had also been a member of the original NIRA Labor Board. Following the logic of *The Modern Corporation and Private Property*, Wagner believed that economic planning by the state, shifting power away from the corporations and toward regulative agencies, was necessary to maintain the vigor of American capitalism. "What we need is not a new economic order but greater precision and better organization of the existing order."

The NLRA began with a declaration of policy proclaiming that the right to organize was necessary—to calm industrial strife caused by management's refusal to bargain, to increase wages to stimulate commerce, and to redress an imbalance between employers who are organized into corporations and employees who do not enjoy full freedom of organization. The Act established the framework in which the modern labor movement has developed.

The NLRA infringed on the traditional definition of the wage labor relationship by protecting certain basic civil liberties on the job. It guaranteed workers "the right to self-organization" and to "concerted action." It prohibited employers from interfering with these rights in specified ways.

The Act also established a right of workers "to bargain collectively through representatives of their own choosing." The necessary complement to this right was a "duty to bargain" on the part of management. The corporate overlords would have to sit down and negotiate with representatives of their vassals. Workers would select their representatives by a majority vote; the winner would be their exclusive representative.

The Act established a powerful National Labor Relations Board (NLRB) to oversee the rights it guaranteed. The NLRB determined the bargaining unit and ran elections to determine the bargaining agent. (It was just such an election that the UAW lost at Smyrna.)

Business, of course, was solidly opposed to the Act, particularly the majority rule, exclusive representation, and bargaining-unit determination clauses. Some argued for proportional representation as an alternative. The Act's supporters countered that proportional representation would fragment the labor movement, impede organization, and in the long run might even defeat the purpose of the Act by causing industrial chaos.

Paradoxically, the Act was also opposed by a coalition of independent leftists, Communists, and civil libertarians organized around the ACLU. They feared the state intervention into the labor movement implied by the Act. And they argued against majority rule, charging that the Act was an attempt to contain the burgeoning class struggle by allowing established unions to gain control of the newly organized workers.

A debate ensued which foreshadowed the contradictions labor law reform faces today. ACLU head Roger Baldwin presciently wrote to Senator Wagner:

"The pressures on any government agency from employers are so constant and determined that it is far better to have no government intervention than to suffer the delusion that it will aid labor in the struggle for the rights to organize, bargain collectively, and strike."

Wagner's response was equally compelling: "Whether we will it or not, government in every country is going to be forced to play a more important role in every phase of economic life, and for that reason is seems to me more useful to attempt to direct the nature of that role rather than merely to state the truism that government is likely to be influenced by the forces in society that happen to be strongest. Certainly these forces cannot be checked by government self-limitation nor do I believe that governmental action in such matters over a decently long period of time serves to check the struggles that labor must carry on by extra-governmental means."

Both sides of the argument proved correct. Government protection made it far easier to organize and the "duty to bargain" made it far harder for companies to refuse unions recognition. Union membership virtually tripled in the decade following passage of the Wagner Act. (The ACLU and almost all of the Left quickly became enthusiastic supporters of the Act.)

In the long run, however, Roger Baldwin's dire predictions also proved true. NLRB and court decisions, plus the Taft-Hartley Act and other legislation, enormously eroded the rights that "labor's Magna Carta" had seemed to establish. The basic civil liberties—freedom of speech, assembly, and the like—that are necessary for the "right to self-organization" still do not exist today in the workplace. And the rights to strike, picket, boycott, and engage in other forms of concerted action have been so restricted that "equality of bargaining power" between labor and management has become a complete fiction. Today, the basic rights proclaimed in the NLRA are virtually a dead letter.

- Equally important, the labor movement itself has been shaped to the structures created by labor law. Bargaining units are determined by the NLRB; so unions have conformed to

government-set demarcations. Early NLRB decisions favored industrial over craft units, strengthening the CIO and forcing the AFL to develop industrial union structures. But ultimately the definition of bargain units sharply divided white-and blue-collar workers within each company, discouraged joint bargaining among workers in different industries who worked for the same corporation, and required workers to organize in ways that restricted their potential bargaining power. Unions fitted their own structure to the bargaining units established by the NLRB.

- The NLRA, as interpreted by the courts, allowed unions to bargain over wages, hours, and working conditions but excluded them from decisions that affected "the entrepreneurial core" of the enterprise. Unions acquiesced in their exclusion from the basic decisions about jobs and investments.
- While previously unions had played a variety of roles, most of these atrophied while the one defined by the NLRA—serving as bargaining agent for a particular group of workers vis-a-vis their employer—became paramount. Unions gave little more than lip service to a role as representatives of all working people vis-a-vis employers as a whole, the government, and other institutions.
- The principle of "exclusive bargaining rights" gave a monopoly of power and patronage to a labor organization which, once recognized, did not have to compete with others for support. Such an organization could easily come to be controlled by a self-perpetuating political machine with a strong interest in getting along with management.
- Such machines found rank-and-file initiative nothing but a threat to their power and stability. It became standard practice for unions to oppose concerted action initiated by rank-and-file workers. Unions became, in effect, agents of the company for enforcing labor discipline. The courts maintained and the unions agreed that the union grievance procedure superseded and made unnecessary the forms of concerted action on the job seemingly protected by the language of the NLRA.

## Today's Reform Proposals

ECONOMIC STRUCTURES are changing today at a pace which rivals the rise of the "corporate system." National economies have become almost entirely permeable to international economic forces. Enterprises have become global. At the same time, corporations are moving away from centralized organization and becoming "networks of profit centers." Different branches of what is supposedly the same company may compete or treat each other as separate entities; supposedly competing companies may cooperate in joint ventures or act as if they are part of the same company. Business ideology declares war on the once-sacred demarcation between "workers" and "managers."

In this environment, the labor movement will only survive if it restructures itself as radically as it did in the 1930s when it shifted from craft to industrial unionism. Labor law reform will only be meaningful if it coincides with and encourages the needed transformation of the labor movement itself.

There are two common approaches to labor law reform—reflecting anew the dilemma debated half-a-century ago by Robert Wagner and Roger Baldwin. One approach aims to restore the effectiveness of the Wagner Act by making it harder for management to use antiunion tactics, such as stalling elections and stonewalling on the bargaining of first contracts. Many such proposals were incorporated in the labor law reform legislation that was defeated in the mid-1970s. Stronger proposals draw on Canadian labor law, which provides for immediate representation elections and requires companies that fail to agree to a first contract to accept a contract imposed by arbitration. The other approach—most often expressed by top labor officials in fits of frustration—is simply to repeal Federal labor law altogether and pursue bargaining based on pure economic muscle.

Unfortunately, neither of these approaches addresses the real problems of American labor. Company stalling and other antiunion tactics do make it harder for unions to win elections, but they have only a marginal effect on what proportion of the workforce is organized and none on whether workers themselves want unions. Reforms in NLRA administration, while justifiable in their own right, are a diversion from addressing the real problems of the labor movement.

But the alternative reform proposal—simply repealing Federal labor law and returning to "the law of the jungle"— would not liberate labor, but rather would return it to the pre-1930 status in which courts treated most expressions of labor militancy as conspiracy or crime. The right of workers to self-organization and concerted action, enshrined in Section 7 of the NLRA, was a genuine advance in civil liberties for workers. As Staughton Lynd has written, "The labor movement should think long and hard before abandoning this hard-won language."

## A "Workers Rights" Approach to Reform

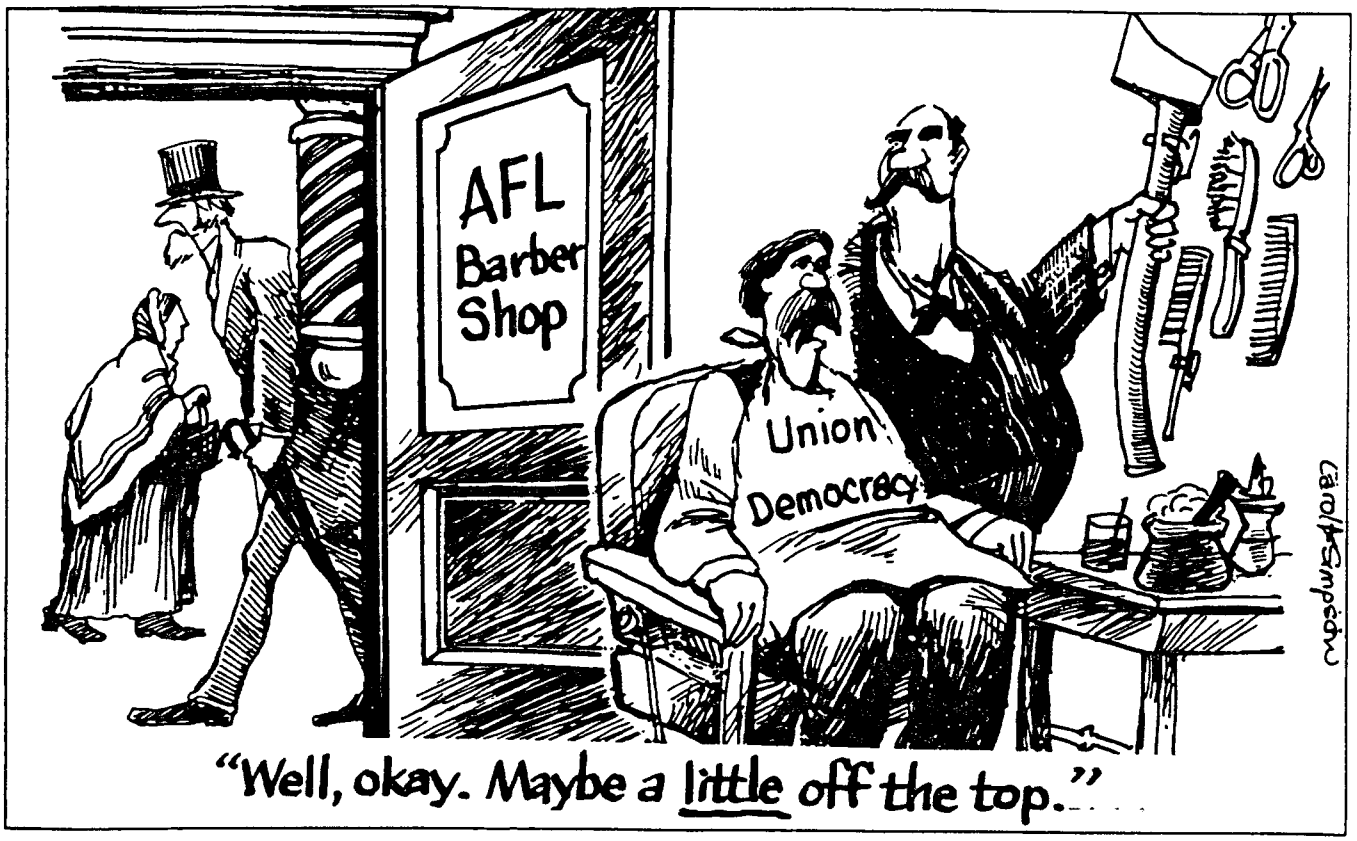
WE PROPOSE, as a third alternative, a new strategy based on expanding the basic rights of all workers, increasing thereby their bargaining power vis-a-vis employers, and at the same time modifying those NLRA administrative provisions that have encouraged bureaucratization in the labor movement.

This approach is based on a vision of a restructured labor movement which would serve, not primarily as representatives of particular groups of workers in bargaining with their immediate employer, but rather as advocates of the needs of all working people vis-a-vis all aspects of society.

Such a labor movement would aim to address the needs of the 83 percent of workers who are not in unions as much or more than the 17 percent who are. It would serve as their advocate in all areas of government and corporate policy. It would provide workers in any workplace resources and technical support to organize themselves and bargain with their employers—or with any other institution which affected their interests.

Within such a context, the objective of labor law reform would be to expand the powers of working people, rather than to increase the size of unions as an end in itself.

This approach would require a reorientation on the part of the labor movement. For example, when an ACLU task force recently proposed




legislation to protect workers from being fired without "just cause," some laborites feared such a plan would hurt the labor movement by giving non-union workers rights now available only through unions. In the approach we are proposing, the labor movement would embrace such proposals—thereby redefining itself as champion of all workers.

To generate discussion, we propose the following three-point program:

1. *ESTABLISH BASIC RIGHTS FOR ALL WORKERS.* Section 7 of the NLRA ostensibly protects the rights to self-organization and concerted action for all workers. But in practice these rights have been interpreted away—often on the grounds that union representation eliminated the need for workers to have such rights either as individuals or as groups. The following proposals grow out of the tradition of Section 7, but they assume that workers should not lose their basic human rights simply because they accept a representative to bargain on their behalf.

A. *Freedom of expression.* No firing or other punishment of workers for exercising first amendment rights of speech and assembly.

B. *Freedom of self-organization.* Right of workers to form civil rights groups, environmental groups, shop committees, or any other kind of group they want and to demand that management recognize and bargain with them. (This of course infringes on the current right of unions to "exclusive representation"; to advocate it will show that the labor movement is serious about empowering ordinary workers, both inside and outside of unions.)

C. *Right to concerted action.* No firing or other punishment for workers who engage in direct action protests on the job. This protection to apply to all groups of workers, whether in unions or otherwise.

D. *Freedom of information.* Right of workers to information about business conditions, investment plans, and other data affecting jobs and conditions. (While companies may complain that release of such information may aid competing companies, requiring it for all companies nullifies this complaint.)

E. *Media access.* Other freedoms mean little if there is a monopoly of the channels of communication. Workers in situations like the Smyrna Nissan plant have been "captive audiences" for bombardments of company propaganda. Law should provide that media channels directed at employees should be available on a "public access" basis to all groups.

2. *INCREASE THE BARGAINING POWER OF ALL WORKERS.* One of the stated objectives of the Wagner Act was to establish equality of bargaining power between workers and employers. Legal doctrine maintains this has been achieved via collective bargaining, but as labor lawyer and historian Katherine Stone has argued this is a misleading fiction which is used to justify restrictions on workers rights. The above proposals will help restore a degree of power to both unionized and ununionized workers. In addition, labor law reform should:

A. *Restore the right to strike.* This right has been so much eroded that most of the time workers live under a system of compulsory labor. In most instances it is illegal to strike without sanction of the union, during the life of a contract, or over issues that are supposedly part of the "entrepreneurial core" of the enterprise. Further (and in complete denial of the

Norris-La Guardia Anti-Injunction Act of 1932), the courts now routinely grant injunctions forbidding strikes and strike-related activities. (Fines levied against the United Mine Workers for violating court orders this year exceed $23 million.) Protection of strikers against company, legal, and even union reprisal should be a central objective of labor law. (Unions can make a start on their own by rejecting contract provisions which deny workers the right to strike.)

B. *Legalize labor solidarity.* The Taft-Hartley Act and other legislation and court decisions have outlawed some of the most important means workers have for supporting each others' struggles, such as sympathy strikes and boycotts. These restrictions have played an important role in fragmenting the labor movement and making each union an island unto itself. Their removal would both increase workers' potential power and encourage a more solidarity-based form of unionism.

3. *END UNION BARGAINING MONOPOLIES.* As noted above, the principle of exclusive representation was established over the objection of civil libertarians and labor radicals who saw it as hindering dissent and reinforcing bureaucratism in the labor movement. A half-a-century of experience has proven them right. The time has come to call into question monopoly unionism and open a debate about union pluralism.

Union pluralism would not require abolition of the whole structure of existing labor law; a partial deregulation would suffice. The key might be a system of proportional rather than exclusive representation. When the NLRB runs an election for bargaining agent, each organization running might be certified for the proportion of the vote that it receives, rather than "winner-take-all" representation. The bargaining agent under such a system would be a bargaining council composed of the various organizations in proportion to their voting strength. (This form of "works council" bargaining exists in many European countries; Poland's Solidarity chose it after examining all the world's labor laws.)

Like corporate deregulation, union deregulation would lead to a complex institutional restructuring. On the one hand, it would increase competition among unions, forcing them to strive to win the support of the rank-and-file. It would replace the present one-party system with the famous benefits of democratic competition.

At the same time, such deregulation might generate new forms of cooperation among unions. Joint bargaining councils might become the norm and the boundaries between different unions might become less significant. This would make it far easier for workers to group themselves for bargaining not just in craft or industrial units but—for instance—with all the far-flung components of a multinational corporation or with all the employers of one region.

The results of such restructuring are not completely predictable. Unions might compete destructively against each other for members and dues; workers divided into different unions might be weakened relative to management; some existing unions might lose much of their membership. But the labor movement that emerged might well be better able than today's craft and industrial unions to adapt to the new structures of business—multinational, networked, complex combinations of bureaucratic and market linkages.

While union officials who are primarily interested in drawing their salaries without the risk of workers choosing another representative will resist this kind of program, such deregulation holds the promise of creating a labor movement far more responsive to the needs of workers—and therefore far more likely to appeal to them successfully. The alternative to some such a transformation of the labor movement itself is an epoch of continuing decline.

## Legal Reform and Direct Action

DOES ALL this mean that a labor law reform agenda should be the labor movement's central response to its crisis? Certainly not.

It was the mass strikes of the early 1930s that first put labor law on the national agenda. It was the emergence of industrial union forms in the field that created the alternative to craft union models. The NLRA was far more radical than it otherwise would have been because it had to be drawn to accommodate these insurgent realities. The way to force labor law reform is for the labor movement to start re-forming *itself* and taking action that requires government and business to adapt to its challenge.

The UAW at Smyrna took the problem of high accident rates and made it an issue in the NLRB election. But the labor movement's concern with Nissan workers' health and safety need not be limited to election-time. Workers shouldn't have to have a union contract to organize and take concerted action around safety or other issues. And the labor movement doesn't have to win an NLRB election to help them fight for their right to do so. Labor law reform—reform that empowers workers to struggle for their own needs —can be part of that fight. Z

## FURTHER READING

*The State and the Unions* by Christopher Tomlins provides a politically perceptive history of American labor law.

*The ACLU and the Wagner Act* by Oscar Daniel details the shifting attitudes of civil libertarians and the left toward labor legislation in the 1930s.

Most of the debate on which this article draws has taken place in law journals. Notwithstanding their titles, the following articles do not require a law degree to understand. They should be available at any law library.

"'Constitutional Rights' by Staughton Lynd (Social Law Review, Vol. 62:1417, 1989) provides a wonderful exploration of the origin and significance of workers rights.

"Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941" (62 Minn. L. Rev., 1978) by Karl Klare traces the early gutting of the radical implications of the Wagner Act.

"The Postwar Paradigm in American Labor Law" (90 Yale L.J.) by Katherine Stone shows the rise and fall of ideological coherence in American labor law since the Wagner Act.

Workers Rights

# The New American Workplace Are Unions Allowed?

*The lack of any ringing endorsement of union or worker rights, reflects thinking high in the administration*

*By David Bacon*

Some people describe the new American workplace as a kind of corporate heaven on earth. Others call it a war zone. Which point of view you take, of course, depends largely on who you are. If you're a software designer or engineer, life in a high technology company can be pretty comfortable. But if you were caught in one of the many layoffs in Silicon Valley's electronics plants, your workplace feels very insecure. And if you're an immigrant worker in a contract assembly plant, your job doesn't seem very different from one in a garment sweatshop.

Since President Clinton's election, high technology companies have been pressing for changes in labor law which would, they say, bring it into line with new realities, but which would also scrap many protections for workers. Unions and workers also would like to see changes, including enforcement of existing rights, and new legislation which would take into account the proliferation of contracted and temporary work.

The Clinton administration may have already made a decision to scrap key sections of labor law which prohibit company unions, in order to make high tech industry more "competitive." As hearings unfold across the country, the administration's Commission on the Future of Labor Management Relations seems ready to put this deal on the fast track. But whether workers and unions will also receive increased protection seems much less sure.

The Dunlop Commission (named for its chair, John Dunlop, labor secretary under President Nixon) held its key hearing in Silicon Valley. The lines in the labor law debate were drawn more clearly there than in any previous hearing. In fact, one commission member, Bill Usery, labor secretary under President Ford, noted that in other parts of the country most corporate testimony took the position that little reform of labor law was needed. By implication, labor law and the administration of the NLRB have become so ineffective that it is no longer a significant restraint on the union-fighting activities of most companies.

Under the kleig lights in San Jose's cavernous convention center, witnesses gave the commission a good first-hand look at the "high performance workplace" at work teams, labor/management cooperation, the contingent workforce, and the new world of "corporate culture and values." According to Pat Hill-Hubbard, senior vice-president of the American Electronics Association, "employees have become decision-makers, and management has practically disappeared." She called for "a new public policy for labor-management relations." Doug Henton, who represents Joint Venture: Silicon Valley, an industry/government policy group which convened the hearing, was even more blunt. "Unions as they have existed in the past are no longer relevant," he said. "Labor law of 40 years ago is not appropriate to 20th century economics."

Not everyone agreed. Amy Dean, the new business manager of the South Bay AFL-CIO Labor Council, warned the commission to "be cautious, that in our haste to reform, we not have the fox guarding the hen house and call that cooperation." The problem, she noted, was that cooperation was only possible "when each party recognizes the legitimacy of the other."

According to many workers and union representatives, the new workplace is one divided between

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the haves and have nots, where permanent jobs are being abolished, and low-wage jobs in contract services and manufacturing are expanding. Even in the big plants belonging to Silicon Valley's largest employers, workers contested the rosy descriptions of a new era in labor/management cooperation.

"The company always told us that they had to be competitive," according to Romie Manan, a worker at National Semiconductor Corporation's non-union Santa Clara plant. "Increasing the company's profitability, they said, would increase our job security. That was the purpose of our workteams, to make us efficient and productive. We became more efficient. Our yield rate on each wafer went from 80 percent to 95 percent.

"Then the company took the ideas contributed by the experienced workforce in Santa Clara, which they got through the team meetings, and used them to organize new fabs with inexperienced workers in Arlington, Texas, where wages are much lower. The experienced workers lost their jobs. The team meetings stole our experience and ideas, and didn't give us any power to protect our jobs and families."

Manan was due to lose his job February 11, after 16 years at the National Semiconductor plant. Over 30,000 semiconductor workers on production lines in Silicon Valley have lost their jobs in the last 10 years, including large numbers of immigrants and women.

Intel Corporation's plant, on the other hand, is just a couple of blocks down the street. But it might as well be on the other side of the planet, according to Kirby Dyess, vice-president of human relations. She led a whole panel of speakers from Intel, whose choreographed presentation dwelt at length on elaborate structures in the workplace which promote productivity and efficiency.

Phuli Siddiqi, an Intel worker, presented "a worker's perspective." She described "Intel values," which included quality, discipline, risk-taking, customer orientation, and holding the opinion that "Intel is a great place to work." She described "worker ownership of projects and products," and the company's program for employee recognition, called "pat on the back." But missing from her presentation was any mention of wages, benefits, job insecurity, or any of the normal day-to-day job concerns that plague most workers, especially in plants where jobs seem to vanish overnight.

In fact, Dyess declared that "there are no more jobs at Intel. We just have people and work to be done."

The commission heard numerous presentations by representatives of Tandem, 3Com, Applied Materials, the American Electronics Association (AEA), and other companies. None of them, however, mentioned any problems which might cause workers to organize unions. In the "high performance workplace," unions aren't necessary or desired. Work teams have taken their place, they asserted, and provide workers with a voice. There's only one problem. Many of these new structures for labor/management cooperation are illegal.

A key section of labor law, section 8(a)(2) of the National Labor Relations Act, prohibits company unions. The law was written in the 1930s when many big U.S. corporations tried to organize unions for their workers in order to prevent workers from organizing independent unions of their own. Labor law was intended to outlaw company unions like the Colorado Industrial Plan, organized by John D. Rockefeller in his Ludlow coalmines just weeks after the infamous "Ludlow massacre" of the wives and children of striking miners. He announced at the time that "until labor and capital join hands and recognize their interest is a common interest...there can be no progress."

But in a recent decision in the case of Electromation Corp., courts have held that workteams set up to discourage workers from organizing a separate and independent union function as the old company unions did. Dyess was very specific about the desire of large electronics companies to modify that court decision, and to even eliminate section 8(a)(2). She said that Intel would turn the heat on Congress to get rid of it, and expected other companies in the AEA to do the same.

In the early 1970s, Robert Noyce, one of Intel's founders, declared that "remaining nonunion is an essential for survival for most of our companies...This is a very high priority for management." Dyess confirmed that Noyce's statement still described the company's position, and said that when workers organized unions, it was a failure of management. All of her specific comments about unions, however, were made outside of the hearing, because, she said, the AEA had told her to avoid specifics in Intel's testimony.

At National Semiconductor, according to Manan, the company's overall labor/management cooperation scheme was intended to fight unions. Manan was a shopfloor leader in the late 1970s and early 1980s of the United Electrical Workers' Electronics Organizing Committee. He described how National set up its scheme, telling workers that they had to team up with management in order to defeat the Japanese competition. Fear for their jobs, he said, drove workers to join the teams.

In the middle of wage cuts and National's first big waves of layoffs, "we tried to organize a union in my plant and in others," Manan told the commission. "All

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the union leaders in my plant except for myself were fired. Most of the union activists in other plants were fired as well. Although we filed charges with the National Labor Relations Board, no one was ever rehired, and in many cases the board wouldn't even issue a complaint."

Ironically, the Dunlop Commission was set up under pressure from unions, who hoped that it would examine the failure of existing labor law to enforce workplace rights. Manan's example was only one among many the commission heard. Union after union came to the Silicon Valley hearing, and to previous hearings in other parts of the country, documenting wholesale violations of existing labor law. Enforcement of the National Labor Relations Act, they say, has become a joke.

Previous commission hearings in Louisville and East Lansing provided further documentation of the ways in which NLRB procedures have become an obstacle to workers in their organizing efforts. Last May, the Jobs with Justice coalition of unions and community organizations organized sit-ins at NLRB offices around the country to dramatize the board's failures, and to call for an extensive reform program.

Participants in the demonstrations and hearings discussed the endless delays in board procedures, affording employers and unionbusters ample opportunity to create an environment of terror and fear, in which workers have to decide not only the issues of organizing a union, but on the future of their jobs themselves. Fired workers have testified about the complete lack of penalties on employers. Unions and workers able to withstand the employer offensive and live through firings still have to negotiate a first contract. They recounted story after story of strikes broken by the use of permanent replacements. Companies reorganize, close and reopen, change names and owners, and union contracts get tossed out with little legal recourse.

The AFL-CIO nationally has concentrated almost exclusively on passage of the Cesar Chavez Workplace Fairness Act, that would outlaw permanent replacements during the first 10 weeks of a strike. The two-year old strike of over 500 Teamsters from the Diamond Walnut plant in Stockton, California has become a national symbol of the desperate need to limit strikebreaking, and the enormous leverage it's given employers.

But the Jobs with Justice program takes into account not only the need to defend existing unions and contracts, but to eliminate some of the worst obstacles to the organizing efforts of unorganized workers. It includes reforms to increase penalties on employers who fire workers in the course of organizing efforts, who are now only required to reimburse their lost wages, often years after firings take place. Jobs with Justice calls for arbitration of first contracts, and the protection of existing contracts when companies reorganize. Finally, it calls for a faster and simpler means for workers to win union recognition, pointing to the system used in Canada, where employers must recognize a union among workers when presented with union cards signed by a majority.

Like hearings and commission-sponsored forums in other parts of the country, the Silicon Valley hearing heard testimony documenting the need for a broad program of reform. But unlike hearings elsewhere, this hearing also saw unions take on another part of the dark underside of high tech employment the contingent workforce. Silicon Valley has become the scene of problems long associated with the sweatshops of other industries, but that are a new and startling contrast to the hi-tech public image the valley projects. Stable, well-paying production jobs in the valley's large plants are disappearing, while contractors providing janitorial and food services or assembling circuit boards for big manufacturers proliferate. They compete for business by cutting wages and conditions.

For the last two years, labor unrest has been rising in response. Janitors have mounted militant campaigns which won agreements with contractors who clean buildings at Apple and Hewlett-Packard. The valley's first strike of production workers flared up a year ago at a contract assembly plant, Versatronex. These actions protested declining conditions for the immigrants who make up the bulk of the contracted workforce.

According to Mike Garcia, president of the valley's janitors' union, Service Employees Local 1877, "high technology manufacturing, instead of creating the high-wage, high-skill jobs that will bring prosperity to our country, will pattern itself after the service sector. The inevitable result," he said, "will be contractors in manufacturing competing over who can drive wages and benefits the lowest."

Adding to the stakes riding on the labor law reform debate is a new effort launched in January by a multi-union coalition to organize the valley's 40,000 contract workers. Instead of concentrating on a single contractor, or organizing plant by plant, it aims at the whole low-wage contract workforce.

Rather than competing against each other, drawing jurisdictional lines in the sand among the valley's unorganized workers, the Campaign for Justice is based on union cooperation, an historic change. Four separate international unions have formed an overall strategy committee, and have contributed researchers and organizers to a common pool. They include the janitors' union, the Teamsters, the hotel and restaurant workers, and the clothing workers. The heart of the campaign is a community—union alliance, evolving in Silicon Valley since the late 1980s. Two community representatives sit on the strategy committee, making joint planning decisions with union representatives.

Experiences like those at Apple and Versatronex have convinced campaign planners that traditional organizing methods are ineffective. John Barton, the campaign's coordinator, calls tactics dependent on NLRB elections part of a losing strategy. Instead, he

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draws on a decade of new and sophisticated thinking among progressive organizers around the country, and their experiences in Silicon Valley.

Based on the experience of successful organizing campaigns among janitors around the country, Garcia proposed one main priority to the commission. Labor law, he said, should tie contractors to the manufacturers they work for. At present, although big manufacturers control the wages and worklives of contract workers indirectly, they have no responsibility for them. If the janitors who clean Apple's buildings, for instance, lose their jobs because Apple changes janitorial contractors, workers have no right to picket Apple. If they do, they are violating labor law.

Predictably, high-tech employers oppose this change, along with any other proposal to enforce organizing rights.

Which set of proposals, however, will wind up being enacted as a result of the commission's recommendations? It seems very likely that the companies will get what they want. The commission, although a product of union pressure originally, states its main mission is "to make recommendations concerning what changes, if any, are needed to improve productivity through increased worker-management cooperation and employee participation."

The lack of any ringing endorsement of union or worker rights reflects thinking high in the administration. Labor Secretary Robert Reich declared on the "MacNeil-Lehrer Report" last April that "we don't want to load the deck in either direction...I don't care whether you're unionized or nonunionized."

In a step that drew much union criticism, the Silicon Valley hearing was convened by Joint Venture: Silicon Valley, an association of 100 top executives of the largest high-technology corporations, with a sprinkling of government officials, two labor leaders, and almost no grassroots community participation. Joint Venture acted at the request of Marty Manley, the Department of Labor's Deputy Secretary for the American Workplace. Manley bowed out of the organizing process for the Silicon Valley hearing after setting it in motion, and has become unavailable for interviews since.

Silicon Valley firms clearly have the ear of the Clinton administration. The president and vice-president have made numerous high-profile visits to company facilities, valley executives were prominent in Clinton's campaign, and his chair of the Joint Council of Economic Advisors is Laura d'Andrea Tyson, a UC Berkeley professor with strong ties to the industry. The valley is the administration's showpiece for revitalizing the U.S. economy. That gives industry's point of view on labor law reform a lot of weight in Washington.

After the hearing adjourned, one of the commissioners, Thomas Kochan, an MIT management professor, was blunt about the commission's dilemma. "If we bring the administration a traditional package [of labor law reforms], it'll die on the vine." In the only real exchange between commissioners and witnesses during the hearing, both Kochan and commissioner Doug Fraser, past president of the United Auto Workers, tried to get industry representatives to agree to a trade-off in return for concessions on 8(a)(2). Would they agree, for instance, to accept responsibility for contingent or contract workers, and allow workplace committees to really represent workers in dealing with management over wages and working conditions?

"We're not looking for someone to represent employees," responded Deborah Barber from Quantum Corp. "The concept of representation seems archaic," added Cheryl Fields-Tyler from the AEA. When Fraser asked them what alternatives existed for workers unhappy with management decisions, Debra Engel, vicepresident of 3Com answered: "the company has an open-door policy."

The audience laughed.

Unfortunately for unions, however, the administration seems to have little enthusiasm for proposals for labor law reform which would strengthen workplace rights. The Cesar Chavez Workplace Fairness Act lies in the Senate a few votes short of the 60 needed to override a filibuster. Despite pre-election promises, the administration has not made it a priority to get those votes and get the bill passed. Proposals like those of Jobs with Justice go even further, and, therefore, seem even less likely to win administration support.

But while angry and vocal about their frustrations with the failure of current labor law to protect them, union representatives at the hearing were nevertheless optimistic about the longterm prospects for increasing labor strength. The optimists include Steven Lerner, building services director for the Service Employees union, one of the most successful union organizers in the country. Lerner led the development of the Justice for Janitors campaign strategy, bringing more than 30,000 janitors into his union nationwide in the last few years, including over 2,000 in Silicon Valley.

Lerner and the Justice for Janitors organizers used a combination of civil disobedience, community coalition-building and targetted corporate pressure. Other effective campaigns by progressive organizers have relied on quick strike action, and well-organized boycotts. To a certain extent, they all try to identify groups of workers, including immigrants, women, African-American workers and low-wage workers, who are ready to take militant, direct action. And they all avoid the NLRB as much as possible.

That's perhaps the most telling comment about the state of labor law today, that the most effective organizing activity among workers is that which depends on the law the least. While it seems that this activity has given up any immediate hope of reform, Lerner emphasized the connection between labor law reform efforts and real-life organizing activity.

He recalled that the National Labor Relations Act was only passed in the 1930s in response to large-scale strikes and organizing drives. "Workers will get better laws," Lerner said, "not because that's a good idea, but because the level of conflict is so disruptive that a rational system is better. Labor law won't change unless there's a demonstrated need." He called on unions not to wait for reforms before making much greater efforts to assist in worker organization, and called organizing unions a fundamental right. "The very fact of organizing is the most compelling argument for protecting workers' rights," he declared. Z

# IRRECONCILABLE DIFFERENCES: LABOR-MANAGEMENT COOPERATION IN THE WORKPLACE

SEPT. 1994

By Elly Leary[1]

American workers are under ideological attack. It doesn't matter where you work or what you do, the message is the same. Unions are the cause of America's economic decline. Adversarial relations (whether or not there is a union) stand in the way of America regaining its competitive edge in the global economy. It is time for something new and different. Instead of "them and us" we must get reoriented to "common interests" and "cooperation." The success of our main economic rivals, Japan (and to a lesser extent Germany), we are told, lies precisely in those countries' cooperative labor-management relations. Just about everyone has jumped on this bandwagon: employers, the press, academics of all stripes, President Clinton and his Secretary of Labor, Robert Reich, and even some well-established unions.[1]

## Old As the Hills

But what is being billed as something new and different is actually as old as the hills. It is an American tradition dating back to the turn of the Century.[2] But it wasn't until 1915 that these cooperative labor-management plans really got rolling. Just after the (in)famous Bloody Ludlow Massacre and the defeat of the United Mine Workers of

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[1] [bio, thanks to those who read and made suggestions.] A special of thanks is owed to Mary Hollens who encouraged me to write up what I've been saying at worker educationals for more than five years now.

America, John D. Rockefeller instituted the "Colorado Industrial Plan (CIP)." The CIP, the brainchild of the future Canadian Prime Minister McKenzie King, became the model for all future plans reaching perfection at Harvester (the flagship of the American Plans) and in steel. By 1934, 93% of all steel workers were organized into these plans, called "company unions." In other sectors company unions became equally entrenched.[3] These company unions were so powerful that until they were outlawed by the Wagner Act (1935), they grew faster than independent unions.

Over the years labor-management cooperative plans have been modified and renamed. All plans, whether they were from 1890 or 1990 have some common features: Joint labor-management committees (the "better" ones have elected worker representatives) which handle workplace "grievances" and issues concerning production and quality. Some even have input into who gets laid-off and recalled. But no matter what they are called or when they existed, the purpose is the same -- to get tighter control of the workplace while giving the illusion of ceding control. It's a strategy that is inconsistent with independent unionism.[4]

## Three Strikes and You're Out

These late 20th century versions of company unions are spreading like poison ivy

through America's workplaces. Even unionized workplaces have got the rash. How did we come full-circle to the point where company unionism is not only acceptable, but the vision of choice? A lot of people point to the co-opting power of perks that workers usually receive for signing on: paid time off the job to meet with the company, training sessions in fancy settings, trips to other workplaces (sometimes overseas) to check out their program, special privileges, and in some cases extra pay.

Other people view these set-ups as an American version of Co-determination, the system of labor relations in place in Germany (and Sweden to a lesser extent). This idea is especially popular among academics.[5] There are, however, some crucial differences which make the hoped for outcomes impossible. First, is the relationship between German unions and the political movement and how this affects daily life at work. The Social Democratic Party, tied to the union movement, has been powerful enough to pass laws which have both leveled the playing field between management and labor and created a vast social safety net. Laws force management to negotiate with elected employee reps over a wide range of issues -- length of work day, training, introduction of technology, wages, time off, and even investment. Employers who refuse face penalties.[6] This allows unions to come to the table with power, not hat in hat, hoping to convince management that what they want will be "good for business." Another critical factor is that the German unions see workplace cooperation as a tactical move to build a worker-friendly society, not a goal in itself.

Perhaps the biggest reason for the resurgence of company unionism has been the condition of our American labor movement. Many link the decline of the U.S unions to the rise of business unionism, which has its roots in the World War II era. Although a lot of ink has been spilled about the failure of business unionism and consequences to working people,[7] three major disasters stand out, labor's "Three Strikes," so to speak. First, labor traded it's independent political agenda for economic security. By the early 1950s labor's demands for national health care and the thirty hour work week had fallen by the wayside. Second, unions just coasted along, riding big business' coattails into the new factories of an expanding economy. Aside from organizing in the public sector, the AFL-CIO devoted almost no resources to unionize either the sunrise industries, like computers and telecommunications, or the emerging labor markets, in particular the sunbelt southwest. Operation Dixie, the campaign to organize the south, was half-hearted and abandoned after a few years, long before any pay off could have been reaped. The third strike, and the most was devastating, was big labor's refusal to come to grips with the rapidly changing workforce. Too often the new workforce of women and people of color were ignored because of the wrong-headed idea that these folks were anti-union.

The 1974 oil "crisis," which brought an end to the post World War II economic expansion, placed the whole business union system in jeopardy. But the escalation of globalization and competition in the 1980s turned this into a bottom-of-the-ninth-ten-runs-down situation. Desperate and rudderless, many unionists and their friends in academia

have embraced labor-management cooperation either as a last ditch attempt to save what can be saved before extinction, or as the only alternative available.

## The Marriage From Hell

In the most simple terms, this generation's version of company unions improves upon the old McKenzie King model by integrating the Japanese system of "lean production"[8] with "Theory Y"[9] management. The result is a highly political system of corporate hegemony that operates through a system of tightly constructed contradictions, or irreconcilable differences. The negatives are just as important as the positives in the system's functioning. The goal is to get more work from fewer workers and to get there with the minimum amount of friction and the maximum amount of compliance. This marriage from hell has earned several names: "Management by Stress,"[10] "The Competitive-Cooperative Workplace,"[11] and "Anorexic Production."[12]

Theory Y, based on common wisdom that you get more with honey than vinegar, has its roots in the comprehensive Hawthorne works experiments. Beginning in 1924 and continuing for over a decade, an army of social scientists descended on this Chicago facility of Western Electric to study how to make workers more productive. After controlling for nearly every conceivable variable (from food intake, to lighting, to length of work day), the researchers finally concluded that the most effective way to increase

production is to pay attention to workers.[13]

The opposite of Theory Y is Theory X, a system of labor relations that considers workers dumb bricks to be ordered around. Although the term hadn't been invented then, Theory X describes the underlying psychology behind Frederick Taylor's system of workplace organization where every job is broken down to it's most minute part.[14] There is more to Taylorist production, which most people associate with the assembly line, than just the organization of how work gets done. Codification of work production was also aimed at taking away the power of the supervisor and giving it to top management. At the time Taylor was devising his scheme, front line supervisors ran their work areas like personal feifdoms, hiring and firing, assigning work, pay rates, etc. as they pleased.[15] Likewise, today's labor-management programs seek to take power away from the supervisor. This time, however, the goal is to eliminate them entirely and make workers supervise each other. Although the rhetoric surrounding this new system claims to replace out-dated Taylorism, it's really decentralized Taylorism where responsibility is pushed downward and power is shifted upward. This system of decentralized Taylorism operates through six separate, but interrelated, sets of contradictions.

## The Poison Apple

The first, which I call the poison apple cluster, is geared toward making a smooth

transition as responsibilities are shifted downward to individual workers. Under the guise of "team work" individuals are made to shoulder the load. Workers are manipulated to see any problem which arises as an individual aberration to be solved individually, not through collective action. This set of contradictions "works" by establishing a system of obligations. It's success is critical. If it fails then the rest of the system won't fall into place. Management is instructed to stop yelling and start listening. Talk about "valued employees" and "we're all in this together" are common. It's no accident that the new message is precisely the same as the traditional appeal the union movement has made to workers -- respect, dignity and value in the workplace. But it doesn't stop at just talk.

Group sessions are held where workers and managers sit side by side and air complaints. Free meals, cookouts, trinkets, T-shirts, hats, you name it are passed out like candy at Halloween. Every effort is made to correct complaints about lack of supplies, dirty work areas, and vending machines that don't work. Workers are encouraged to revamp their work areas and try out new ways to get the job done. Quality suggestions are especially important. In some places management eliminates the bosses' dining room and special parking lots. In too many work places this new measure of respect represents a 180 degree turn. Things look and feel good, but deep down every worker knows you don't get something for nothing.[16] It's like Snow White who whistles while she works, and thinks good thoughts about her step-mother -- until she bites into the poison apple.

## Impartial Technology

The second set of contradictions revolves around taking advantage of new technologies and scientific discoveries. The talk is "labor-saving," the walk is work intensification (speed-up). Management is after a lot more than the unhampered introduction of computers, computer driven machinery, and robots.[17] Workers are trained to use computers to pinpoint wasted motions and "labor savings steps." By inputting their every movement into the computer, workers are allowing management to gain control over their knowledge of their job.[18] Instead of the hated "time study" man, impartial science (the computer) now determines how much work makes a "fair day."

Technology also means the reorganization, even reconception, of work. Similar to the radical transformation brought about by linking the technological breakthroughs of the second industrial revolution with Taylorism, the new labor-management programs aim for equally dramatic results.[19] This is already underway. In some manufacturing plants the long snaking assembly line and conveyor system has been replaced by circles of machines (computer driven and operated by 1/2 the number of employees) connected to each other by computer driven transport platforms/sleds (AGVs). In offices the paperwork assembly line with it's checks and balances is being replaced by E-Mail linking sub-groups and suppliers who now are part of the responsibility loop.

## One Best Way

In the third set of contradictions workers are asked to participate in the work process in a way that ends up limiting their choices. It centers around the search for the "one best" way to do the job. If workers, managers and engineers just put their heads together, eventually they'll find it. Workers participation is crucial since they have the most complete knowledge about what works and what doesn't. The perfection that everyone is shooting for is a management defined goal -- it's a process that has no extra steps, cuts out every possible source of waste (be it material or human input), and takes the least time to produce the best results. It applies equally to building up doors on a car, getting an insurance claim through the system to final payment, or developing a new camera or computer.

The more workers participate, the fewer options they leave themselves. Individual adjustments to take into account height, strength, time of day, handedness, personal style and motivation are rooted out, until finally there is only the "one best way." In some auto plants the results would please even Frederick Taylor -- tools and parts are lined up on workbenches in a specific order. Just to make sure, outlines are painted on work surfaces to remind workers just where and how to place tools and parts.

## Hung or Shot

The fourth set of contradictions centers around giving workers the illusion of choice and work place empowerment, while in reality workers are giving up whatever power they have. Choice and empowerment are limited to a defined management agenda. When everything clicks, workers will feel that the only choices they have are those on the management agenda and that they are powerless to change the set of options before them. As responsibilities get shifted downward, workers are now "empowered" to make decisions in two areas formerly reserved for management. The first relates to personnel matters: scheduling vacations, handling leaves for injury and sickness, as well as daily absences. In a "healthy" workplace this can be a real plus for workers. But in the "anorexic" workplace, already stretched to the max, giving one worker time off may mean no one will come to take their place. Infighting, bickering and intense peer pressure are common. Workers sometimes refuse to grant each other vacations or days off to take care of family matters. In some GM plants before a worker can return to work from being absent it's the union that OKs doctor's notes and determines whether an absence is excusable.

The second set of empowerment decisions relates to production. Under the banner of "flexibility" workers are forced to participate in cutting their own jobs.[20] Empowerment is reduced to deciding how. It's like letting the death row prisoner decide whether he gets hung or shot and calling that prisoner's rights. "Choice" comes in several forms. The first involves workers agreeing to getting fired and then rehired as "casuals" or "consultants," without the benefits of "permanent" employees. In the second

form groups of workers are given time off the job and closeted with managers and plant engineers. After a day or two of "brainstorming" and "training" workers are told to "redesign" their jobs. They are given almost complete freedom to shuffle things around. They can change the order in which things get done, decide who will do what and even which tools are to be used. The only ground rule is that the all the tasks must be completed in the same amount of time as before but with fewer people. Allowing for more time, keeping the same number of workers or even adding more (often more tasks are put into the mix) are not options. This process is already under way in several GM locations and has the union's blessing.

## If It Walks Like a Duck

Although the goal of decentralized Taylorism is to get rid of supervisory personnel altogether, the reality is the system needs glue to bind it together and be sure its operational objectives are met. That glue is a special corps of people. In this contradiction the talk is of "employee representatives," "team advocates" and the like, while the walk is company promoter. In the non-union workplace the company point person is the "team leader." Management takes great care in selecting and training team leaders, often interviewing several thousand people for only several hundred positions. In traditional Taylorism supervisors relied on fear and punishment to get workers to comply. By contrast, in decentralized Taylorism the team leader uses Theory

Y interpersonal skills to be sure workers come to the very decisions management wants, but all the while making sure workers believe it was their idea. As one personnel manager (a trained social psychologist) put it, "We want puppets without strings." Nothing is left to chance. With the assistance of psychologically oriented top management, team leaders meet separately to carefully chart a course for team meetings.[21]

In the union shop decentralized Taylorism is managed by union members. In the UAW system they are appointed and account for between 5 - 10% of the workforce. Even though they are union members they (and elected reps as well) are under contractual obligations to "secure the corporation's market position", "increase operational effectiveness," and "fully utilize employees." At Saturn unionized (UAW) team members conduct hiring interviews for new team members. It's been known that one question, "If you knew that two jobs could be combined and that one union member would be cut, what would you do?" can make or break and interview. In other words, the union is now the productivity police, handing out work here, eliminating a job there, and cutting out waste everywhere. In the 15 years since the UAW signed on to labor-management cooperation (NUMMI and Saturn being the flagships) productivity has increased 105%, the hourly workforce has been cut by 45%, the 10 hour day has replaced the 8 day as the standard, and there's more overtime than anytime since WWII. Injuries rates have risen more than 400%.

A joint union-management bureaucracy has emerged leaving the union structure of elected representatives an empty shell[22] and rank and filers out in the cold. Recently workers at Saturn voted to end the alternative work schedule (10 hour days, rotating shifts) and go back to the 5 day, 8 hour, fixed shift, but the "partners" (the Union and the Corporation) refused to comply.[23] In one GM plant injured workers no longer get relieved from their job to see the plant doctor, but instead report on their own time to the joint union-management Ergonomics Committee where they are fitted with back trusses and arm and wrist braces for repetitive motion injuries.

## Boiled, Pithed and Shrunk

The Promise of both old and new company unions is to have workers adopt the company's goals as their own. While pockets of doubters, resisters, and those that just plain don't care exist, the majority fall in line. This is not surprising in a non-union workplace. But now it is increasingly common to hear stories how strong unionists, selected to represent the union in joint labor-management plans because of their pro-union commitment, turn into born-again company promoters.[24] How does this happen? A popular theory is the coopting power of perks. Closer to the mark are two well-known high-school frog experiments. In one, a frog is slowly submerged into boiling water. The process of being boiled alive is so gradual that the frog dies without any signs of struggle. However, if the frog were dropped into the boiling water, it would struggle and

splash in an attempt to get out. The second experiment allows students to dissect a live, but compliant frog. A sharp needle is inserted in the frog's brain (through the tympanum) and twirled around literally scrambling the frog's brain. The frog, alive but brain dead, is now ready for the students. While these may be apt descriptions of decentralized Taylorism system of contradictions and its effect on workers, they lack the psychological component, a vital element of hegemony.[25]

In short, we're looking to explain the psychology of contradictions. One such explanation is "cognitive dissonance,"[26] the psychological theory which explains what happens when a person's actions, cultural mores, or events don't match a person's beliefs. The human psyche can't stand this gap, or dissonance. As soon as it appears there will be pressures to reduce it. This pressure mounts as the distance or "magnitude" between the elements grows. Even though there are a number of ways dissonance can be reduced (changing the environment, changing beliefs, adding new elements or information to the situation, taking actions, getting support for your beliefs), reduction is not guaranteed. In fact, dissonance could increase. Nevertheless, most of the time a person tries to reduce dissonance.

Two of the strategies for reducing dissonance, Forced Compliance and Social Support, are most helpful in understanding how the system of decentralized Taylorism works. Forced Compliance works by offering either punishments or rewards to get a person to change their beliefs. Experiments showed that it doesn't matter whether

people are punished or rewarded to change their public behavior or expression. Initially, a person clings to private beliefs even though they may publicly say that they have changed them. Over time though, private opinions will line up with public behavior, to reduce dissonance. In those situations where dissonance comes from "social disagreements," rewards and punishments may not work or are inappropriate. Here a person tries to reduce dissonance in four ways: change their opinion to conform to others; change others' opinions; associate with those that hold opinions like their own; or make people holding the different opinion somehow "not comparable to oneself" thus allowing those opinions to be discounted. The more social interaction there is the more likely that something will be done to reduce dissonance. Generally, people try to associate with other's who hold their own belief (the easiest way), rather than change opinions (theirs or others).

The new labor-management cooperation system is ripe for dissonance reduction solutions. Workers are constantly bombarded with negative and positive "cognitions." These run from slogans, newsletters, meetings where workers are reminded to "beat the competition" and establish "trust" with management to the introduction of "labor-saving" machinery and techniques. Perks are everywhere: prizes for suggestions, trips, off-site training. In shops where the union has signed on rewards are jointly sponsored. Workers who see the gap between rhotoric and reality cling together (or in rare instances, move on). In workplaces which have been "reengineered" it is not uncommon for workers to tell interviewers conflicting things: they like the system and they are too

tired at the end of the day. Most times, however, there are public statements and private complaints, "you can't fight city hall." Overtime these conflicts get resolved. Workers retreat to the bunkers, "I'd better be satisfied because it won't get any better than this." Psychological stress or "pressure" is so widespread that the UAW/Ford national agreement provides workers with "stress debriefings." Bottom line: Workers are "shrunk" into submission.

## Desperately Seeking Solutions

Solutions like the UAW's "stress debriefing," which try to ease anti-worker outcomes, won't cure what's wrong with decentralized Taylorism. Because it's just one aspect of a society-wide "competitiveness" corporate agenda, the only way to insure different outcomes is to change agendas, create a "counter-hegemony." Working people will have to aim big and small at the same time if they are to resolve the system's contradictions in a different direction. A winning strategy depends on putting together pieces that take into account the big picture of society, the medium picture of the labor movement/business unionism, and the small picture of our workplaces. In the workplace it will mean:

1. The Poison Apple: The push-pull here is between the group and the individual. Right now this dilemma is resolved in favor of competition and individualism. To put the

flip side on top, solidarity and collective action, will mean changing the definition of teamwork and team goals -- working together to achieve a fair workpace, rather than reclaiming market share is one example. Teams will have to mobilize and educate if they are to break the "competitive" agenda that management's team champions.

2. Impartial Technology: Although "labor saving" technology is currently being used to intensify work and inflate corporate bottom-lines, the answer does not lie in an anti-technology crusade. Technology and even the Hammer and Champy slash and burn model of work reorganization can be part of the counter-hegemony solution. Coupled with a work sharing agenda (shorter work time) and a program of freeing people to work for the common good (painting schools, visiting nursing homes, after-school programs), lives of everyday folks could be improved greatly. The Uddevalla "transcendent" model[27] of long-cycle tasking married to computer age technology should be considered.

3. On Best Way: Rhetoric aside, the search for the One Best Way is not about quality. It's about profits. Under this scheme workers are just another input, like steel or overhead. And zero defects does not insure quality goods. It is quite possible to produce a defectless product that is poorly designed, made of cheap/inferior material and expensive. Likewise, the current fascination with "customer driven" work organization should be seen for what it really is -- an attempt to break down every aspect of work into it's smallest, individual units. This strategy is particularly harmful in the public sector

where it is used to privatize government services. Decisionmaking by democratically elected officials for the public good are overridden by the needs of individual "customers" who are assessed by how much they "cost" and who purchase services with "vouchers" from private profit-making deliverers.[28]

4. Hung or Shot: Whether it is over issues of "flexibility" or decisionmaking, empowerment needs to be about gaining not giving up power. Teams need to create their own agenda for meetings based on goals of worker comfort, stable employment, and social and community (local and regional) needs.

5. If It Walks Like A Duck: Team Leaders and managers meet to carefully plan team meetings. These pre-meetings do more than just insure that team meetings come up with the "right" decisions. An equally important function is to keep everyone on the management team on the same page of the hymn book. The same dynamic frequently appears in the union shop where joint committees meet behind closed doors, make decisions affecting members daily lives, and are accountable only to themselves. In either environment workers need to meet separately from management. In the battle over who controls the workplace, workers need to be clear about where "common interests" end and their independent agenda begins.

6. Boiled, Pithed and Shrunk: Although the psychology of contradictions won't change, the outcomes can. Right now it's not much of a contest. On one side there is a clearly

articulated agenda of "meeting the competition," "one best way," and "flexibility." For the most part, the other side seems dazed and confused. Pieces of the alternative vision are out there[29] and some workplaces are actively promoting them. These few success stories, the Canadian Auto Workers union (CAW) at the CAMI autoplant[30] and Mazda workers in Flat Rock, Michigan[31] and Steelworkers in New Algoma[32] in particular, are all union shops.

## Spinning Straw Into Gold

These outposts, bucking the dominant trend in business unionism, have succeeded precisely because they are unionized workplaces. The union structure provides a platform from which workers (and even militant business unions) can launch a counter-hegemony offensive. Without this ready-made structure workers are forced to develop their alternative on management's playground where the rules are designed to insure a management victory. The benefits the union structure brings goes beyond the workplace; unions also provide national and international linkages critical in a global economy. Without broadening our sights beyond the enterprise/workplace (and going into the community near and far) no stable or lasting alternative is possible. Whether by design or accident, the early company union strategists grasped this. Japanese capital understood this as well. After breaking the independent industry-based auto unions in the 1950s, Japanese management turned to enterprise unionism.[33]

Seeing no other alternative than to carve out a niche within the framework of business unionism and corporate hegemony, the "new realism" labor leaders and academics center their strategy on the enterprise. They argue that the old company unions, even though they were inpenetrable, coercive, and had little or nothing to do with democracy, contained the seeds of independent unionism. Workers either "bore from within" or used the plans as training grounds for the "real thing."[34] This group hopes that today's workers, aided by their allies in academia, will acheive better results in this replay of history. It is unlikely that management will be any more forgiving as this generation of workers tries to negotiate on their terrain. If rates of unionization are any measure of union strength, unions are not as strong as they were in the 1920s and 1930s. And workers today face an even more sohpisticated array of union busting tactics.[35] True workplace empowerment and democracy will only take place in the context of an alternative vision and strategy that extends beyond the workplace and business unionism. Without that, it's a case of trying to spin straw into gold.

## Endnotes

1. "The New American Workplace: A Labor Perspective," AFL-CIO February 1994, Dunlop Commission testimony by UAW/Ford, Steelworkers at National Steel, and Whirpool Corporation and unions they bargain with.

2. See, Grenier & Hogler, *Employee Participation and Labor Law in the American Workplace* (1992); Richard Edwards, *Contested Terrain: The Transformation of the Workplace in the 20th Century.* (1979).

3. James R. Green, testimony before the Commission on the Future of Worker-Management Relations (January 1994), Thomas Bell, *Out of this Furnace* (1976 ed.). Although written in novel form, Bell's novel about immigrant workers in steel, uses actual minutes and notes from Louis Smolinski, who in the early 1930s was President of the Braddock local of the Amalgamated Ass'n of Iron, Steel & Tin Workers and then a member of both the Employees Representatives and the S.W.O.C. at the Edgar Thomson works; Toni Gilpin, *Left by Themselves: A History of the United Farm Equipment and Metal Workers Union 1938-1955* (1992 unpublished Phd manuscript); David Montgomery, *The Fall of the House of Labor* (1987) on GE/machining, Richard Edwards, endnote 1; John N. Schacht, *The making of Telephone Unionism 1920-1947* (1985).

4. In most instances thes was accomplished as part of management' regroupment to crush the upsurge of unionism during WWI. Some, however, were established to nip unionism in the bud. For a good summary see Nelson Lichtenstein and Howell John Harris, editors, *Industrial Democracy in America: The Ambiguous Promise* (1993); Wyman Gordon cite, WPI guy, paper delivered at Rhode Island Historical Society, May 1994. For current evidence see, Guillermo Grenier, *Inhuman Relations: Quality Circles and Anti-Unionism in american Industry* (1988); Donald Wells, "What Kind of Unionism is Consistent with the New Model of Human Resources Management?" (1991) in John Anderson & Alex Downey, "Total Quality Management: Should Unions Buy Into TQM?" *TARP: Research Series No. 1* (June 1993).

5. The most compelling cases are made by Rosemary Batt & Eileen Applebaum, *The New American Workplace* (1994), Joel Rogers, *Reforming U.S. Labor Relations* (1994), Richard Freeman and Joel Rogers *Who Speaks For Us? Employee Representation in a Non-Union Labor Market* (1993), Karl Klare, *The Labor-Management Cooperation Debate: A Workplace Democracy Perspective* (1988), and Paul Weiler, *Governing the Workplace: The Future of Labor and Employment Law* (1990). For a different interpretation of what these modern employer-sponsored workplace committees mean for workers see, James R. Rundle, "The Debate Over Modifying the Ban on Employer Dominated Labor Organizations: What is the Evidence?" in *Restoring the Promise of American Labor* (1994), and H.K. Klein and Philip Kraft, "Social Control and Social Contract in NetWORKing: Total Quality Management and the Control of Work in the United States," in *Computer Supported Cooperative Work*, (1994).

6. Jutta Helm, "Workplace Democracy in Germany," in Donald Hancock, John Logue, and Bernt Schiller, *Managing Modern Capitalism -- Industrial Renewal and Workplace Democracy in the United States and Europe*, (1991).

7. Nelson Lichtenstein, "Great Expectations: The Promise of Indsutrial Jurisprudence and It's Demise 1930-1960," and David Brody, "Workplace Contractualism in Comparative Perspective," both in Lichtenstein and Harris (L&H); Kim Moody, *An Injury to One: The Decline of American Unionism*, (1988); Daniel Cantor and Juliet Schor, *Tunnel Vision: Labor and The World Economy, and Central America* (1987); and "An Organizing Model of Unionism," *Midwest Labor Research Review* No. 17 (1991).

8. James P. Womack, Daniel T. Jones and Daniel Roos, *The Machine that Changed the World*. (1990), Barry Bluestone and Irving Bluestone, *Negotiating the Future: A Labor Perspective on American Business* (1992), Paul S. Adler, "The Learning Bureaucracy: The New United Motors Manufacturing, Inc.," *Research in Organizational Behavior, Vol 15* (1993). These writers see this system as a win-win situation. The MIT trio (Womack, Jones & Roos) are so sharp they didn't need to speak to workers to make this determination -- they could tell by just lloking into workers' faces. For a considerably less rosy view of lean production see, Knuth Dohse, Ulrich Jurgens and Thomas Malsch, "From 'Fordism' to 'Toyotism'? The Social Organization of the Labor Process in the Japanese Automobile Industry," *Politics & Society* 14, No. 2 (1985), 115-146; Yamamoto Kiyoshi, "Labor-Management Relations at Nissan Motor Co., Ltd (Datsun)," *Annals of the Institute of Social Science* (1980); Fucini and Fucini, *Working for the Japanese* (1990), Steve Babson, "Lean or Mean: The MIT Model and Lean Production at Mazda," *Labor Studies Journal* (Summer 1993).

9. Douglas McGregor, *The Human Side of Enterprise*, (1960).

10. Mike Parker and Jane Slaughter,*Choosing Sides: Unions and the Team Concept* , (1989).

11. Elly Leary and Marybeth Menaker, *Jointness at GM: Company Unionism in the 21st Century*, (1993). Many examples in this paper come from this 64 page pamphlet which is available from New Directions Region 9A, P.O. Box 2221, Woonsocket, RI 02895 (Send $3 +$1 shipping). Yes, a shameless plug.

12. Elaine Bernard, Director, Harvard University Trade Union Program.

13. F.J. Roethlisberger, *Management and Morale* (1947 ed.). For another interpretation of the Hawthorne experiments see, Alex Carey, "The Hawthorne Studies: A Radical Criticism," *American Sociological Review* Vol. 32 No. 3 (1967).

14. For an excellent description of the cahnge from craft production to Taylorist production see David Montgomery's *Fall of the House of Labor.*

15. Lisabeth Cohen, *Making a New Deal: Industrial Workers in Chicago, 1919-1939* (1990); Daniel Nelson, *American Rubber Workers and Organized labor 1900-1941* (1988) (on The Industrial Assembly).

16. NUMMI workers and committeemen told interviewer Paul Adler they felt "guilty" and tried to think up ways to reciprocate.

17. H.K. Klein and Philip Kraft, "Social Control and Social Contract in NetWORKing: Total Quality Management and the Control of Work in the United States," in *Computer Supported Cooperative Work* (1994).

18. Charley Richardson [untitled document in author's possession].

19 Elaine Bernard, "Technological Change and Skill Development" [rest of cite], Michael Hammer and James Champy, *Reengineering the Corporation: A Manifesto for Business*, (1993). The Swedish automaker Volvo briefly experimented with reconceptualizing the process of the vehicle building at its Uddevalla plant. Unlike the Hammer and Champy model of radical reorganization to meet downsizing goals of 45%, a prime objective at Uddevalla was worker satisfaction. This system, "transcendent production" blends high tech dock assembly (collecting materials and delivering them via computer driven/automated vehicles, and computerized planning and coordination of assembly) with long-cycle craft work of earlier days. Productivity at Uddevalla was comparable to plants using the traditional assembly-line. Christian Berggren, *Alternatives to Lean Production:Work Organization in the Swedish Auto Industry* (1992).

20. John Tomaney, "The Reality of Workplace Flexibility," in *Capital & Class* (1989): Anna Pollert, "Dismantling Flexibility," *Capital and Class* (Vol 34, Spring 1988).

21. Guillermo Grenier, *Inhuman Relations: Quality Circles and Anti-Unionism in American Industry* (1988). Klein and Kraft.

22. See *Jointness at GM.*

23. *The Tennessean*, September 8, 1994.

24. Donald Wells, *Empty Promises: QWL and the Labor Movement* (1987).

25. Antonio Gramsci, *Prison Notebooks* (1970 ed.), especially "On Education."

26. Leon Festinger, *A Theory of Cognitive Dissonance*, (1957).

27. see Endnote 16.

28. John Anderson & Alex Downey, "Total Quality Management: Should Unions Buy Into TQM?" *TARP: Research Series No. 1* (June 1993).

29. *Jointness at GM.* Mike Parker & Jane Slaughter, "Surviving Lean Production:Two Auto Worker Locals in the United States," (draft July 1993 in author's possession), Canadian Auto Workers Union, *CAW Statement on the Reorganization of Work* (1990), Anderson & Downey, Guillermo Grenier. UAW New Directions 1992 Constitutional Convention Platform.

30. David Robertson, James Rinehart, Christopher Huxley, Jeff Wareham, Herman Rosenfeld, Alan McGough, Steve Benedict, *The CAMI Report: Lean Production in a Unionized Auto Plant* (1993).

31. Fuccini and Parker and Slaughter cites

32. "Joint Workplace Restructuring and Employee Participation Process" New Algoma and USWA. "Union Involvement in work Reorganization: A Steelworker Guide for Staff and Local Unions (1992 Steelworker National Policy and Bargaining Conference). To date, there has been nothing published analyzing New Algoma [cite, Hirsch?]

33. Dohse, Jurgens & Malsh. Nor should enterprise unionism be confused with co-determination. Takashi Araki, "The Japanese Model of Employee Representational Participation," *Comparative Law Journal Vol 15:143.*

34. William Green, President of the AFL in the late teen and 1920s, continually urged a bore from within strategy. For a good summary of Green's efforts see, Craig Phelan, *William Green: Biographer of a Labor Leader* (1989), chapter entitled "Marketing Unionism to Business: The 1920s." Those who think boring from within paid off were: David Brody in L&H, Irving Bernstein, *The Turbulent Years*, (1970). For those who say the compnay unions were training grounds: Mark Barenberg, "Democracy and Domination in the Law of Workplace Cooperation: From Bureaucratic to Flexible Production, *94 Columbia Law Review No. 3 (1994)*; Steve Jeffreys, "'Matters of Mutual Interest': The Unionization Process at Dodge Main," in Nelson Lichtenstein & Stephen Meyer, *On the Line: Essays on the History of Autowork* (1989) says that the Dodge plan allowed workers to meet separately from management and used their anger and frustration to build an independent union. This was not the case, however, at GM, where the management-installed work councils were never intended to be a voice of the employee. Even though a number of UAW activists sat on the works councils, they never developed into genuine bargaining forms (employee reps had no vote) and workers did not use them in developing an independent unions structure. Jeffreys, Sidney Fine, *The Automobile Under the Blue Eagle* (1963); John Kruchko, *The Birth of a Union Local: The History of UAW Local 674, Norwood, Ohio, 19933-1940* (1972).

35. See Commission on the Future of Worker-Management Relations, "Fact Finding Report" (May 1994).